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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,293	02/12/2004	Carl Kaoru Sakamoto	700.002US01	5279
7590 Fogg and Associates, LLC P.O. Box 581339 Minneapolis, MN 55458-1339			EXAMINER KASZTEJNA, MATTHEW JOHN	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/777,293
Filing Date: February 12, 2004
Appellant(s): SAKAMOTO, CARL KAORU

Scott V. Lundberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 18, 2007 appealing from the Office action mailed April 19, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,623,425	Cartledge et al.	9-2003
6,095,972	Sakamoto	8-2000
5,406,941	Roberts	4-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,623,425 to Cartledge et al. in view of U.S. Patent No. 6,095,972 to Sakamoto in further view of U.S. patent No. 5,406,941 to Roberts.

In regards to claims 1-3, 13, 18, 20-25 and 27-31, Cartledge et al. discloses a laryngoscope blade comprising: a main blade portion 20 having a posterior surface, a distal end and proximal end, the main blade portion being relatively straight between the distal end and the proximal end; a blade tip extending from the distal end of the main blade portion, the blade tip being at a select angle with relation to the posterior surface of the main blade portion (see Fig. 5); a first tongue displacement plate (not labeled in figures) coupled to the main blade portion along a length of the blade; a second tongue displacement plate 345 extending from the first tongue displacement plate in a direction that is away from the main blade portion (see Fig. 7), wherein the second tongue displacement plate and the first tongue displacement plate are adapted to work together to displace a patient's tongue during use of the laryngoscope, the second tongue displacement plate having at least one rounded corner; and a blade base coupled to the proximal end of the blade (see Figs. 4-5). Cartledge et al. also disclose the second

tongue displacement plate further having a surface that is positioned in an opposite direction as the posterior surface of the main blade, the surface of the second tongue displacement plate forming a plane that is generally parallel with an axis formed by the length of the posterior surface (see Figs. 6-8). Cartledge et al. is silent with respect to wherein the blade tip having a width that is flared wider in a first direction than a width of the main blade portion. Sakamoto teaches of an analogous laryngoscope having a blade 10 with a main blade portion having a posterior surface, a distal end and a proximal end and a blade tip 12 extending from the distal end of the main blade portion (see Figure 2). Figures 2, 7 and 8 show that the blade tip 12 is flared wider in a first direction than a width of the main blade portion and can be positioned at a select, obtuse angle with respect to the posterior surface of the main blade portion (see Figure 19 and col. 5, lines 15-25). It would have been obvious to one skilled in the art at the time the invention was made to flare the blade tip in the apparatus of Cartledge et al. to give the tip more surface area to spread apart a patient's throat tissue and to stabilize the epiglottis while displacing it anteriorly as taught by Sakamoto (see Col. 2, lines 50-60). Furthermore, Cartledge et al. are silent with respect to wherein the relatively straight main blade portion extends from the blade base at generally a right angle. Roberts teach of an analogous laryngoscope wherein the blade is adjustable between a straight surface and a curved surface depending upon the preference of the physician (see Figs. 1, 4 and 6). Thus, Roberts demonstrates the desirability of having a laryngoscope operable with either a curved or straight blade. It would have been obvious to one skilled in the art at the time the invention was made to have the blade

extend at a right angle from the blade base in the apparatus of Cartledge et al. to better accommodate different pharyngeal configurations of various patients as taught by Roberts.

In regards to claims 4, 14 and 26, Cartledge et al. discloses a laryngoscope blade further comprising: the blade base having a bottom portion, the bottom portion having a channel; and the proximal end of the main blade portion being received in the channel of bottom portion of the blade base, wherein the main blade portion proximate the proximal end does not extend below the bottom portion of the blade base to allow clearance for a patient's teeth during use (see Figs. 2 and 5).

In regards to claim 5, Cartledge et al. discloses a laryngoscope blade, wherein the second tongue displacement plate has a displacement length that is significantly shorter than a length of the main blade (see Figs. 5 and 8).

In regards to claim 6, Cartledge et al. discloses a laryngoscope blade, wherein the first tongue displacement plate extends generally at perpendicular angle from the main blade portion (see Fig. 4).

In regards to claim 7, Cartledge et al. discloses a laryngoscope blade, further comprising: the first tongue displacement plate having a first cutout portion proximate the proximal end of the blade to allow clearance of a patient's top teeth during use (see Figs. 3-5).

In regards to claims 8-9, Cartledge et al. discloses a laryngoscope blade, further comprising: the first tongue displacement plate having a second cut out portion

approximate the distal end of the blade (see Figs. 3-5). Sakamoto discloses a blade in a semi-circle (see Fig. 6).

In regards to claims 10 and 16, Cartledge et al. discloses a laryngoscope blade, further comprising: the second tongue displacement plate extending generally at a perpendicular angle from the first tongue displacement plate in a direction away from the main blade portion (see Figs. 3-5 and 8).

In regards to claims 11 and 19, Cartledge et al. discloses a laryngoscope blade 9, wherein the second tongue displacement plate generally extends from the first tongue displacement plate in a direction that is opposite the first direction of the flared blade tip (see Figs. 3-5 and 8).

In regards to claim 12, Cartledge et al. discloses a laryngoscope blade, wherein the second tongue displacement plate and the first tongue displacement plate are generally flat in shape (see Figs. 3-5 and 8).

In regards to claims 15 and 17, Cartledge et al. discloses a laryngoscope blade, wherein the length of the first tongue displacement plate is less than half the length of the main blade portion and wherein the second tongue displacement plate extends from the first tongue displacement plate at generally a perpendicular angle (see Fig. 4).

(10) Response to Argument

In regard to independent claims 1, 13, 22 and 27-28, applicant states Cartledge et al. fails to disclose a main blade portion being relatively straight between the distal end and the proximal end. Examiner disagrees. The main blade portion of Cartledge et

al. is clearly straight between a distal end and a proximal end as viewed from a bird's eye view, or down the barrel of the handle. The blade *must* be straight between its distal and proximal ends to enable passage within a patient's throat, as seen in Figure 11.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one skilled in the art at the time the invention was made to flare the blade tip in the apparatus of Cartledge et al. to give the tip more surface area to spread apart a patient's throat tissue and to stabilize the epiglottis while displacing it anteriorly as taught by Sakamoto (see Col. 2, lines 50-60).

Applicant further states that Roberts does not teach or suggest the use of tongue displacement plates. However, Roberts is not used to teach or suggest the use of tongue displacement plates as Cartledge et al. clearly shows the use of tongue displacement plates (see Figs. 3-4 and 6-8). Rather, Roberts is used to teach of an analogous laryngoscope wherein the blade is adjustable between a straight surface and a curved surface depending upon the preference of the physician (see Figs. 1, 4 and 6). Roberts is used to demonstrate the desirability of having a laryngoscope operable with

either a curved or straight blade and thus a laryngoscope having a blade that extends at a right angle from the blade base, or handle.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As broadly as claimed, the combination of Cartledge et al., Sakamoto and Roberts meet all the limitations of the recited claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Conferees:

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